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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,049	07/30/2001	Julie A. Raye	KCC4711.1	9824
321	7590	11/17/2005	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			HAQ, NAEEM U	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/918,049	Applicant(s) RAYE ET AL.	
	Examiner Naeem Haq	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-35, 37-45, 48-52, 55 and 56 is/are pending in the application.
- 4a) Of the above claim(s) 32-35, 37-44, 55 and 56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-31, 45, 48-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This action is in response the Applicants' amendment filed May 10, 2005. Claims 14, 36, 46, 47, 53, and 54 have been cancelled. New claims 55 and 56 have been added. Claims 1-13, 15-35, 37-45, 48-52, 55 and 56 are currently pending and will be considered for examination.

The Applicants' amendments to the drawings and the specification are sufficient to overcome the objection given in the previous Office Action. These objections are withdrawn. The Applicants have cancelled claims 53 and 54, and therefore the objection to these claims is withdrawn.

The Applicants' amendments to the claims are sufficient to overcome the rejection of claims 1-54 under 35 U.S.C. 112, second paragraph given in the previous Office Action. This rejection is withdrawn.

The Applicants have cancelled claim 47, and therefore the rejection of this claim under 35 U.S.C. 112 is withdrawn.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-31 and 45-54, drawn to a method of processing a purchase order of products based on consumer information, classified in class 705, subclass 26.

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- II. Claims 32-44, 55, and 56, drawn to a method of determining an assortment of products for a consumer based on the monthly cycle and sleeping habits of the consumer, classified in class 705, subclass 26.

The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as a method of processing a purchase order that does not require the monthly cycle and sleeping habits of the consumer as required in Group II. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

A telephone call was made to Attorney Frank R. Agovino on October 31, 2005 to request an oral election to the above restriction requirement. Mr. Agovino elected the claims of Group I (claims 1-31 and 45-54) without traverse. Accordingly, claims 1-31 and 45-54 will be considered for examination, and the claims of Group II are hereby withdrawn from consideration.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 6-8, 10, 11, 15, 17, 18-21, 23-27, 30, 31, 45, and 48-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman).

Referring to claim 1: Unger teaches a method for selecting feminine hygiene products comprising determining at a first location an assortment of feminine care products for a consumer at a second location remote from the first location based on information provided by the consumer, the determined assortment of feminine care products including a quantity of at least one type of absorbent catamenial product (Abstract, lines 2-9; col. 1, lines 9-36; col. 3, lines 8-16, lines 34-39; col. 4, lines 31-35; col. 15, lines 12-16). Unger does not teach that the quantity is a non-commercial quantity. However, the Examiner notes that this limitation is not functionally involved in the steps of the claimed method. Therefore this limitation is deemed to be nonfunctional descriptive material. The steps of determining, accepting, and prompting would be performed the same regardless of the quantity of the products order. The difference between the Applicants' quantity and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)

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also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to order any quantity in the invention of Unger because such information does not functionally relate to the steps of the claimed method and because the subjective interpretation of information does not patentably distinguish the claimed invention. Unger also does not teach accepting at a first location a purchase order placed by a consumer at a second location, processing the purchase order, and prompting the consumer to place another purchase order for products. However, Hartman discloses a method of placing a purchase order for a product over a communications network wherein a consumer operating a computer at one location (i.e. second location) (Figure 2, item "220") places a purchase order that is accepted and processed by server at another location (i.e. first location) (Figure 2, item "210"; Abstract, lines 1-3, lines 13-21; col. 2, lines 51-62; col. 3, lines 46-64). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to exploit the commercial potential of the Internet and World Wide Web as taught by Hartman (col. 1, lines 45-52). Unger does not teach prompting the consumer to place another purchase order for the products. However, Hartman discloses a method of placing a purchase order for a product over a communications network wherein a consumer is prompted to "Continue Shopping" (Figure 1C, item "108"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would

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have been motivated to do so in order to generate more business from a consumer as suggested by Hartman.

Referring to claim 2: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Unger teaches that the information is provided through a computer network (col. 3, lines 34-39; col. 15, lines 12-16). Unger does not teach that the purchase order is placed by the consumer through a computer network. However, Hartman teaches this limitation (Abstract, lines 1-3). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to exploit the commercial potential of the Internet and World Wide Web as taught by Hartman (col. 1, lines 45-52).

Referring to claim 3: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Unger teaches that the determined assortment of feminine care products includes a quantity of multiple types of absorbent catamenial products (col. 3, lines 44-47: "Each system of feminine hygiene products containing at least two different kinds of feminine hygiene products may be packaged in a common package which is made available to the consumer"). Unger does not teach that the quantity is a non-commercial quantity. However, the Examiner notes that this limitation is not functionally involved in the steps of the claimed method. Therefore this limitation is deemed to be nonfunctional descriptive material. The steps of determining, accepting, and prompting would be performed the same regardless of the quantity of the products order. The difference between the Applicants' quantity and the prior art is merely subjective. Thus

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this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to order any quantity in the invention of Unger because such information does not functionally relate to the steps of the claimed method and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claim 6: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Unger teaches that the determining step includes presenting questions to the consumer regarding her monthly cycle, and said information represents the consumer's answers to said questions (col. 4, lines 44-49; col. 5, lines 39-41).

Referring to claim 7: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches that the purchase order includes payment information (Figure 1C, item "108": "Payment Method"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to exploit the commercial potential of the Internet and World Wide Web as taught by Hartman (col. 1, lines 45-52).

Referring to claim 8: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches that the purchase order includes a target delivery date (Figure 1C: "The 1-click orders below (available in 3 or fewer days) will be shipped together"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to inform the consumer of the delivery date of the products.

Referring to claims 10 and 11: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches the step of fulfilling the purchase order placed by the consumer (claim 1, lines 17 and 18). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to complete the purchase of the item as taught by Hartman.

Referring to claim 15: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches sending an email to the consumer to "Continue Shopping" (Figure 1C, item "108", col. 6, lines 22-28). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to generate more business from a consumer as suggested by Hartman.

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Referring to claim 17: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the prompting step includes advising the consumer of the assortment of products last ordered by the consumer. However, the Examiner notes that the content of the prompt is not functionally involved in the steps of the claimed method. Therefore this limitation is deemed to be nonfunctional descriptive material. The steps of determining, accepting, and prompting would be performed the same regardless of what information was contained in the prompt. The difference between the content of the Applicants' prompt and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to place any information in the prompt of the cited prior art because such information does not functionally relate to the steps of the claimed method and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claim 18: Claim 18 is rejected under the same rationale as set forth above in claim 1.

Referring to claims 19-21: Claims 19-21 are rejected under the same rationale as set forth above in claim 3.

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Referring to claim 23 and 24: Claims 23 and 24 are rejected under the same rationale as set forth above in claim 2.

Referring to claim 25: The cited prior art teaches or suggests all of the limitations of claim 18 as noted above. Furthermore, Hartman teaches the step of allowing the consumer to revise the products prior to placing a purchase order (Figure 1C: "Press this button if you Changed Quantities of any item below"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the method of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow a user to change quantities prior to placing an order as suggested by Hartman.

Referring to claim 26: The cited prior art teaches or suggests all of the limitations of claim 18 as noted above. Furthermore, Unger teaches the recommending step includes recommending an assortment of feminine care products expected to meet the consumer's needs for one monthly cycle (col. 3, lines 17-19).

Referring to claim 27: The cited prior art teaches or suggests all of the limitations of claim 26 as noted above. Furthermore, Hartman discloses accepting a purchase order from the consumer for multiple units of a product (Figure 1C). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the method of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the user to select different quantities of a product as suggested by Hartman.

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Referring to claims 30 and 31: Claims 30 and 31 are rejected under the same rationale as set forth above in claim 10 and 11.

Referring to claim 45: Claim 45 is rejected under the same rationale as set forth above in claim 1.

Referring to claims 48 and 49: Claims 48 and 49 are rejected under the same rationale as set forth above in claim 2.

Referring to claim 50: Claim 50 is rejected under the same rationale as set forth above in claim 26.

Referring to claim 51: Claim 51 is rejected under the same rationale as set forth above in claim 10.

Referring to claim 52: Claim 52 is rejected under the same rationale as set forth above in claim 1.

Claims 4 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of "From sanitation to liberation?: The modern and postmodern marketing of menstrual products" by Shelley M. Park (hereafter referred to as Park).

Referring to claim 4: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the feminine care products include at least one product selected from the group consisting of menstrual cramp medication and contraceptives. However, Park examines the marketing of menstrual products. In particular, Park states "A complete account of the ideological

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underpinnings of feminine hygiene products would examine the connections between the marketing of soaps, cleansers, menstrual aids and nonprescription contraceptives and home pregnancy tests" (Park: Footnote 1). The Examiner notes that menstrual aids such as Midol and nonprescriptive contraceptives are included in a complete account of feminine hygiene products. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cited prior art to include at least one product selected from the group consisting of menstrual cramp medication and contraceptives as taught by Park. One of ordinary skill in the art would have been motivated to do so in order to relieve symptoms associated with PMS (Park Pages 8-9).

Referring to claim 22: Claim 22 is rejected under the same rationale as set forth above in claim 4.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view US 5,947,302 to Miller.

Referring to claim 5: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the information represents a selection by the consumer of products which comprise the determined assortment of feminine care products. However, Miller discloses a method for dispensing absorbent articles wherein an individual selects the determined assortment of feminine care products (col. 2, lines 25-31). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the

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teachings of Miller into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to optimize the use of the products (col. 2, lines 34-39).

Claims 9 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of US2002/0019778 A1 to Isaacson et al. (hereafter referred to as Isaacson).

Referring claim 9: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach the step of storing data representing the determined assortment of feminine care products for subsequent retrieval and use with the consumer. However, Isaacson discloses a method for placing on-line orders wherein previous purchase orders stored in a database are displayed to a user for subsequent use by the user (paragraph [0099]). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Isaacson into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the user re-create or edit a previous order as taught by Isaacson (paragraph [0099]).

Referring to claim 29: Claim 29 is rejected under the same rationale as set forth above in claim 9.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of US2002/0050526 to Swartz et al. (hereafter referred to as Swartz).

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Referring to claim 12: The cited prior art teaches or suggests all of the limitations of claim 11 as noted above. The cited prior art does not teach delivering the ordered products to the consumer along with a reusable storage container for said ordered products. However, Swartz discloses a fulfillment system that uses reusable totes (i.e. bags) for delivery (paragraph [0143]). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Swartz into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the consumer to reuse the totes (i.e. bags) in the future.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of US2002/0050526 to Swartz et al. (hereafter referred to as Swartz) and Official Notice.

Referring to claim 13: The cited prior art teaches or suggests all of the limitations of claim 12 as noted above. The cited prior art does not teach that subsequent orders are delivered to the consumer without a reusable storage container. However, Official Notice is taken that it is old and well known in the art for a vendor to not deliver a storage container to a consumer on a subsequent order. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to not deliver a storage container to a consumer on a subsequent order in the cited prior art.

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One of ordinary skill in the art would have been motivated to do so in order to conserve storage containers.

Claims 16 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of Official Notice.

Referring to claim 16: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach periodically prompting the consumer to place another purchase order. However, Official Notice is taken that it is old and well known in the art to periodically prompt a user to take an action. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the method of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to get the user to perform the action.

Referring to claim 28: The cited prior art teaches or suggests all of the limitations of claim 18 as noted above. The cited prior art does not teach standing purchase order for the products. However, Official Notice is taken that standing orders are old and well known in the art. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate a standing order in the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to have the convenience of periodic delivery of a product without the hassle of submitting a new purchase order.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on (571)-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Naeem Haq', with a long horizontal flourish extending to the right.

Naeem Haq, Patent Examiner
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November 4, 2005